

**KENTUCKY PERSONNEL BOARD
MINUTES OF JANUARY 9, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on January 9, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Donald W. "Don" Blevins, Member
Amanda Cloyd, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD DECEMBER 12, 2014**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Mr. Blevins seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Personnel Board finished the 2014 calendar year with a total of 335 filed appeals. This is the highest number of appeals compared to the last three or four years.

Mr. Sipek reported that in *Wade Hester vs. Finance and Administration Cabinet*, Appeal No. 2013-042, that the Agency, by counsel, filed a Notice of Compliance stating they complied with the Board's Final Order issued in November 2014. Mr. Sipek stated that the Agency filed this notice on its own, which he has not seen any agency do before. All thought this was a good practice.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

[Dr. Stevens arrived at 9:40 a.m.]

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington, Executive Director, came forward to present the Personnel Cabinet's report.

Ms. Bevington stated that at the next Board meeting she will provide amendments to the Personnel Cabinet's regulations for the Boards review. The regulations are undergoing a few changes and are still being compiled

As to the Kentucky Employee's Health Plan (KEHP), Ms. Bevington stated there was a smooth transition for the vendors involved and the Cabinet has received positive feedback.

Requested amendments to regulation 101 KAR 1:325, Probationary Period

Ms. Bevington was provided a copy of the amended regulation and she agreed with the changes, which also contained changes by the Personnel Cabinet of amending the four-digit Title Code with an eight-digit Title Code that is used with the Kentucky Human Resource Information System (KHRIS).

Mr. Blevins moved to approve the amendments to 101 KAR 1:325, Probationary Period. Mr. Gillis seconded and the motion carried 6-0.

Following the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. **ORAL ARGUMENTS**

A. **Michael Shane Tolson v. Transportation Cabinet and Jeff Gabbard
(2014-108)**

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri; counsel for Appellee, the Hon. Will Fogle; and the Intervenor, Mr. Jeff Gabbard. After presenting oral arguments, the parties answered questions from the Board.

6. **MOTION**

Kimberly Dickerson v. Cabinet for Health and Family Services

--Appellant's Motion to Enforce Final Order

--Appellee's Response to Motion to Enforce

Mr. Sipek stated this matter was before the Board in December 2014 and a Final Order was issued. Mr. Sipek stated that it is appropriate for the Board members to consider this motion in closed session as it is part of the case. Therefore, this matter was discussed in closed session.

In open session, the motion was granted as follows:

Mr. Blevins moved to grant Appellant's Motion to Enforce Final Order with the exception that it does not include any particular level of travel reimbursement or overtime hours, but is commensurate with the Agency's policy, state regulation and duties performed. Mr. Hutcheson seconded and the motion carried 6-0.

7. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Cloyd seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (9:55 a.m.)

Mr. Hutcheson moved to return to open session. Dr. Stevens seconded and the motion carried 6-0. (11:20 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Michael Shane Tolson v. Transportation Cabinet and Jeff Gabbard (2014-108)

Mr. Hutcheson, having noted Appellant's exceptions, Appellee's exceptions (returned as untimely), Appellee's response and oral arguments, moved to accept the recommended order sustaining the appeal to the extent of redoing the promotional process. Mr. Gillis seconded and the motion carried 6-0.

B. Patricia Major v. Labor Cabinet (2013-103)

Mr. Hutcheson, having noted Appellant's exceptions, moved to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 6-0.

**C. Douglas Neal v. Justice and Public Safety Cabinet (Corrections) (2014-114)
(Deferred from December meeting)**

Mr. Gillis having noted Appellee's exceptions and oral argument moved to accept the Final Order dismissing the appeal, as attached to the minutes. Dr. Stevens seconded and the motion carried 6-0.

**D. Donald Arvin and Michael Grubbs v. Transportation Cabinet, Personnel
Cabinet and Clarence Lawson (2014-109 and 2014-095)**

Mr. Hutcheson moved to remand this matter to the active docket for further proceedings. Mr. Gillis seconded and the motion carried 6-0.

E. Sharra Blakemore v. Cabinet for Health and Family Services (2013-041)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

F. Eric Brinegar v. Cabinet for Health and Family Services (2014-204)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 6-0.

G. Sha-Donya C. Bryant v. Cabinet for Health and Family Services (2014-088)

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

H. Wade Hester v. Finance and Administration Cabinet (2014-089)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 5-0, with Ms. Cloyd recusing.

**I. Brandi Peavyhouse Martin v. Personnel Cabinet, Cabinet for Health and
Family Services and Justice and Public Safety Cabinet (Corrections)
(2014-071)**

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

J. **Hassan Rezaei v. Justice and Public Safety Cabinet (Juvenile Justice)**
 (2013- 284)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

K. ~~**Tiffany Stine v. Justice and Public Safety Cabinet (Criminal Justice**~~
 ~~**Training)**~~ **(Moved to February Agenda)**

Show Cause Orders – No Response Filed – Appeals Dismissed

Mr. Blevins moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeal. Mr. Gillis seconded and the motion carried 6-0.

L. Kevin L. Hyde v. Education and Workforce Development Cabinet

M. David Vogler v. Justice and Public Safety Cabinet (Juvenile Justice)

9. **WITHDRAWALS**

Mr. Hutcheson moved to accept the following withdrawal of appeals *en bloc* and dismiss the appeals. Ms. Cloyd seconded and the motion carried 6-0.

A. Kimberly Curtis v. Cabinet for Health and Family Services

B. Leeanna Trainer v. Cabinet for Health and Family Services and Personnel Cabinet

C. Erica Greene v. Justice and Public Safety Cabinet (Corrections)

10. **SETTLEMENTS**

A. Dennis Graham v. Transportation Cabinet

B. Kiara Huddleston v. Cabinet for Health and Family Services

C. Richard “Matt” Johnson v. Cabinet for Health and Family Services (mediated)

D. Charles Walters v. Cabinet for Health and Family Services (mediated)

E. Theresa Moore v. Cabinet for Health and Family Services (mediated)

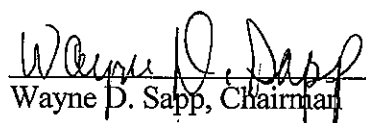
Ms. Cloyd moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Mr. Hutcheson seconded and the motion carried 6-0.

11. **OTHER**


Pursuant to discussion by the Board members, it was determined that the Personnel Cabinet should discuss with the Board the issue of acceptance "with prejudice" letters where Appellant's resign.


Ms. Cloyd moved to approve the Board inviting the Personnel Cabinet to discuss the matter of "with prejudice." Mr. Hutcheson seconded and the motion carried 6-0.

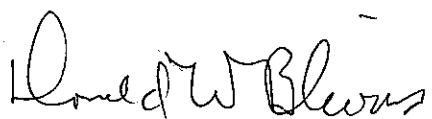
There being no further business, Mr. Hutcheson moved to adjourn. Dr. Stevens seconded and the motion carried 6-0. (11:35 p.m.)


Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman


David B. Stevens, Member


David F. Hutcheson, Jr.


Donald W. Blevins, Member


Amanda Cloyd, Member

3. The Appellant acknowledged that carrying a firearm was an essential function of his position as a Correctional Officer. The Appellant clearly understood that once a Domestic Violence Order of Protection is entered against you, you are prohibited from using or possessing firearms. Having had an amended Domestic Violence Order entered against him in the Jefferson Family Court on January 18, 2008, it is clear the Appellant understood that there was an exemption available under the Brady Act which would have allowed him to continue to carry a firearm for employment purposes only. [See Appellee's Exhibit 4.]

4. A Domestic Violence Order of Protection was again entered against the Appellant in the Jefferson Family Court on December 11, 2012. During this particular incident, the Appellant represented himself and did not have the help of an attorney. According to the Appellant, he held a conversation with the Prosecutor and the Judge regarding the exemption available under the Brady Act which would have allowed for his continued use of firearms for employment purposes only. However, the 2012 Order of Protection did not include this exemption under the Brady Act.

B. Delete Finding of Fact number 6 and substitute the following:

6. The Board finds the Appellant did not provide the Appellee with a copy of his 2012 Order of Protection. The Board finds had it not been for the subject background check performed in February or March of 2014, Appellant would never have informed the Appellee that the 2012 Order of Protection had been entered against him.

C. **Insert** a new Finding of Fact number 8 as follows:

8. The Board finds Appellant was in the best position to know the effect of the domestic violence order of protection entered in 2012 on his ability to carry a firearm. The Board finds Appellant knew or should have known, or made inquiry, as to whether he actually had an exemption on this domestic violence order to allow him to carry a firearm for performance of work duties. The Board finds the fault in not ensuring that the firearm exemption for work purposes not being added to the domestic violence order of protection rests solely with the Appellant.

D. **Renumber** Findings of Fact 8 and 9 to numbers 9 and 10.

E. **Delete** Conclusions of Law numbers 3, 4, 5, and 6 and substitute the following:

3. The Board rejects any conclusion or suggestion that it was the responsibility of Appellant's supervisors within the Department of Corrections to follow-up with Appellant after he reported arrest in December 2012 to determine if in fact Appellant was still qualified to perform the functions of Correctional Officer. Appellant had previous experience in obtaining a firearms exemption to a domestic violence order and was doubtless aware such an exemption was necessary in order for him to fulfill the functions of Correctional Officer.

4. The Board concludes the Appellant's failure to ensure that he did in fact have the firearms exemption for work purposes language added to the Domestic Violence Order was his responsibility alone.

5. The Board concludes that the Department of Corrections acted reasonably upon discovering that Appellant for over a year had been performing the functions of a Correctional Officer which require the lawful ability to carry a firearm without actually having the legal authority to carry that firearm. The Board concludes that the Appellee had just cause to take action against Appellant and that the penalty of dismissal was neither excessive nor erroneous, but was in fact a sound management decision.

F. **Renumber** Conclusion of Law 7 to number 6.

G. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **DOUGLAS NEAL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-114)** be **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13th day of January, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Stafford Easterling
Douglas Neal
Bobbie Underwood